

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the
2 Uniform Civil Forfeiture Procedure Act, so as to provide for hearings upon the seizure of
3 certain property; to provide that certain properties shall not be subject to forfeiture; to
4 provide for a definition; to provide for criteria; to provide for related matters; to provide for
5 a short title; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 This Act shall be known and may be cited as the "Innocent Georgian Process Improvement
9 Act."

10 **SECTION 2.**

11 Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the Uniform
12 Civil Forfeiture Procedure Act, is amended by revising Code Section 9-16-7, relating to
13 reporting of seizure and role of state attorney, as follows:

14 "9-16-7.

15 (a)(1) When property that is intended to be forfeited is taken by any law enforcement
16 officer of this state, within 30 days thereof the seizing officer shall, in writing, report the
17 fact of seizure and conduct an inventory and estimate the value of the property seized and
18 provide such information to the district attorney of the judicial circuit having jurisdiction
19 in the county where the seizure was made.

20 (2)(A) As used in this paragraph, the term 'controlled substance' shall have the same
21 meaning as set forth in Code Section 16-13-21. Such term shall not include contraband.

22 (B) When such property was used in or derived directly from, or is alleged to have
23 been used in or derived directly from, a controlled substance, any person with an
24 interest in property seized under subsection (a) of this Code section may, upon such
25 seizure, petition the court for a hearing. The court shall hold such hearing no later than
26 seven days after such petition is filed and such hearing may be held in conjunction with
27 any other pretrial hearing. The court shall order the release of such property if, as the
28 result of such hearing, the court finds that the seizure was invalid, the property is not
29 reasonably required to be held as evidence, or the final judgment in the matter likely
30 will be in favor of the defendant or any other person with an interest in the property.

31 (b) ~~Within~~ Except as provided for under Code Section 9-16-7.1, 60 days from the date of
32 seizure, the state attorney shall:

33 (1) Initiate a quasi-judicial forfeiture as provided for in Code Section 9-16-11; or

34 (2) File a complaint for forfeiture as provided for in Code Section 9-16-12 or 9-16-13.

35 (c) If the seizing officer fails to comply with paragraph (1) of subsection (a) of this Code
36 section or the state attorney fails to comply with subsection (b) of this Code section, the
37 property shall be released on the request of an owner or interest holder, pending a
38 complaint for forfeiture pursuant to Code Section 9-16-12 or 9-16-13, unless the property
39 is being held as evidence. When the court releases property pursuant to this subsection,

40 upon application by the state attorney, it may impose conditions as specified in paragraph
41 (1) of Code Section 9-16-14."

42 **SECTION 3.**

43 Said chapter is further amended by adding a new Code section to read as follows:

44 "9-16-7.1.

45 (a) As used in this Code section, the term 'controlled substance' shall have the same
46 meaning as set forth in Code Section 16-13-21. Such term shall not include contraband.

47 (b) No property used in or derived directly from, or that is alleged to have been used in or
48 derived directly from, a crime involving a controlled substance and that is encumbered by
49 a security interest shall be forfeited. The state attorney shall summarily return property to
50 the secured interest holder, other than the defendant or other owner, up to the value of the
51 interest. If the property is not summarily returned, the secured interest holder may petition
52 the court at any time before the court enters judgment in the criminal prosecution. The
53 court shall hear the petition within 30 days after its filing. If the secured interest holder
54 establishes by a preponderance of the evidence the validity of the security interest, the state
55 attorney shall relinquish claims to the property, up to the value of the interest, and the court
56 shall return the interest to the secured interest holder; provided, however, that the property
57 shall not be returned to the secured interest holder if:

58 (1) The security interest is invalid;

59 (2) The interest resulted from a fraudulent conveyance; or

60 (3) The secured interest holder consented to the use of the property in the crime for
61 which the defendant is charged.

62 (c)(1) No property used in or derived directly from, or that is alleged to have been used
63 in or derived directly from, a crime involving a controlled substance and that is owned
64 by a person other than the defendant shall be forfeited. The state attorney shall
65 summarily return property to such person. If the property is not summarily returned, such

66 person may petition the court at any time before the court enters judgment in the criminal
67 prosecution. Such petition shall set forth:

68 (A) The claimant's right, title, or interest in the property;

69 (B) The date and circumstances of the claimant's acquisition of the interest in the
70 property;

71 (C) Additional facts supporting the petition; and

72 (D) The relief sought by the claimant.

73 (2) No fee shall be assessed for a petition filed under paragraph (1) of this subsection.

74 (3) The court shall hear the petition within 30 days after its filing. The court shall return
75 the property to such person, and the state attorney shall relinquish all claims to such
76 property, if such person establishes by a preponderance of the evidence the validity of
77 their interest in the property; provided, however, that the property shall not be returned
78 to such person if:

79 (A) The claimant's interest in the property is invalid;

80 (B) The claimant had actual knowledge the property was used in or derived directly
81 from the crime for which the defendant is charged;

82 (C) The claimant was willfully blind to the crime for which the defendant is charged;
83 or

84 (D) The claimant was not a bona fide purchaser.

85 (d) Nothing in this subsection shall prohibit the claimant from providing information to
86 any party or testifying in any trial as to facts the claimant knows.

87 (e) The defendant or convicted offender may invoke the privilege against
88 self-incrimination or the marital privilege during the forfeiture proceeding. The trier of fact
89 may draw an adverse inference from the invocation of such privilege."

90 **SECTION 4.**

91 All laws and parts of laws in conflict with this Act are repealed.